IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 527 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JOY ENTERPRISE

Versus

SAMASTA PARAJIA PATTANI SONI GNATI MAHAMANDAL

Appearance:

MR YATIN SONI for the Petitioner.

MR PJ KANABAR for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/11/2002

ORAL JUDGEMENT

#. The present applicant herein had preferred an application for fixation of standard rent, being Civil Misc. Application No.623 of 1983. The said application was filed in the Small Causes Court at Rajkot. On 6.12.1990, the trial Court rejected the said Civil Misc. Application No.623 of 1983 on the ground of nonappearance of the applicant. It is submitted that, on that day, the

original opponent had given the application for adjournment, but that application was rejected. Subsequently, the application of the present applicant was dismissed for non-prosecution. The present applicant, thereafter, filed the application for setting aside the said order, by which, the application was dismissed for non-prosecution and since there was delay in filing such application, substantive application for condonation of delay was also filed, which is numbered as Civil Misc. Application No.52 of 1991. The applicant herein requested the trial Court to condone the delay in filing the application for setting aside the earlier order and for the purpose of restoring the original application, being Civil Misc. Application No.623 of 1983, which is filed for the purpose of fixation of standard rent. The trial Court rejected the said application for condonation of delay on the ground that the said application is filed after a period of 65 days. The trial Court came to the conclusion that the applicant has given three grounds for condoning the delay in filing the application. However, the trial Court found that the said grounds given by the applicant cannot be said to be just and proper for the purpose of condoning the delay. The trial Court came to the conclusion that, the said grounds are not proper. The trial Court came to the conclusion that, no affidavit of the concerned advocate is filed. Ultimately, it was found that, no sufficient reasons are given for condonation of delay.

#. One of the grounds which weighed with the learned trial Judge was that the concerned Advocate has not filed the affidavit. However, in my view, simply because the Advocate has not filed an affidavit can never be said to be a valid ground for rejecting the application for condonation of delay. Even the grounds given by the applicant were sufficient for condoning the delay.

The Apex Court, in the case of Collector, Land Acquisition, Anantnag and another Vs Mst.Katiji and others, reported in AIR 1997 SC 1353, has laid down certain principles for deciding the delay condonation applications. The Apex Court has held in para 3 as under.:

> "The legislature has conferred the power to condone delay by enacting S.5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is

adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay ? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which

was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to inform with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

#. The learned advocate for the applicant has also relied upon the judgment in the case of M/s Esbee Inds. Corpn. Vs. M/s Buch Systems Int. Ltd., reported in 2001(4) Supreme 470. In the aforesaid judgement the Apex Court has observed in para 3 as under.:

"3. The order of the High Court that is under challenge stated that the second appeal before it was out of time by 161 days and that the application for condonation of delay was not acceptable because except for pleading forgetfulness, no other ground was made out. We have heard learned counsel and examined the

> pleadings. We are of the view that, in any event, the delay of 161 days ought to have been condoned and, if the High Court was of the opinion that costs were required to be imposed, that order could also have been passed. We think that, in these circumstances, the delay should be condoned and the appeal restored to the file of the High Court to be heard and disposed of on merits."

#. It is required to be noted that, the disposal of application for condonation of delay took more than 11 years before the trial Court. It is surprising as to how such type of applications can be allowed to be kept pending for a long period of a decade. Even if the application of the petitioner was taken for hearing, by this time, even the entire proceedings would have been over on merits.

#. Mr.Kanabar, learned advocate, for the respondent, submitted that, this revision application may not fall within the limited jurisdiction of this Court. In my view, the trial Court has not exercised its jurisdiction properly and has not considered the scope of Section 5 of the Limitation Act, coupled with the fact that by not condoning the delay, the original application preferred for condonation of delay is finally disposed of. Under the circumstances, the order in question is required to be interfered with by this Court.

Considering the facts and circumstances of the case, in my view, the trial Court should have condoned the delay and should have decided the application on merits. Under the circumstances, the order of the trial Court is quashed and set aside. Delay in filing the application, being Civil Misc. Application No.52 of 1991, is condoned. The trial Judge is directed to decide the said application, submitted by the present applicant for setting aside ex parte order, on merits and in accordance with law, at the earliest and latest by 30.4.2003, without any further delay. During the pendency of this revision application, the applicant has deposited Rs.1000/(Rupees one thousand only) towards the costs as per the order of this Court. Accordingly, while allowing this revision application, the respondent is permitted to withdraw the aforesaid amount of Rs.1000/-(Rupees one thousand only), which may be considered as costs for allowing the application for condonation of delay before the trial Court. Office may hand-over the said amount to Mr.Kanabar, learned advocate, for the respondent, by way of Account Payee Cheque, which may be

drawn in the name of the respondent, so that, there may not be any delay in this aspect.

#. It is clarified that this Court has not expressed any opinion, on merits, whether the original order, by which the application was dismissed for non-prosecution is proper or not. It is for the trial Court to decide the said application on its own merits whether sufficient cause is made out for setting aside the dismissal order.

#. This revision application is allowed. Rule is made absolute. So far as this revision application is concerned, there shall be no order as to costs. Writ to be sent forthwith. The applicant is permitted to take direct service of this order.

(P.B.Majmudar,J)
(pathan)